

MEMORANDUM ENDORSEMENT

Borochoff, on behalf of himself and all others similarly situated v. Glaxosmithkline, et al.

07 Civ. 5574 (LLS)

Deka Investment GmbH, Metzler Investment GmbH, Internationale Kapitalanlagegesellschaft mbH, and INDEXCHANGE Investment AG (collectively the "German Institutional Investor Group") move pursuant to S.D.N.Y. Local Civil Rule 6.3 for reconsideration of the Court's October 5, 2007 Opinion and Order ("the Opinion") appointing Avon Pension Fund administered by Bath & North East Somerset Council ("Avon") as lead plaintiff and Coughlin Stoia Geller Rudman & Robbins LLP as lead counsel.

That decision was made after careful consideration of the applicable law and the parties' submissions. The German Institutional Investor Group has not provided the Court with facts or law to refute that determination and alter the Court's decision.

While the German Institutional Investor Group argues that Rule 23's superiority requirement is not relevant to the appointment of lead plaintiff, other courts have found otherwise. See In re Royal Dutch/Shell Transport Securities Litig., No. 04-374, slip op. at 37 (D.N.J. June 30, 2004); Royal Ahold, 219 F.R.D. at 352-53. Additionally, it would be improvident to appoint the German Institutional Investor Group as lead plaintiff if it may be excluded from the class at the class certification stage when superiority is an important consideration.

The German Institutional Investor Group's argument that it will be bound by a judgment rests upon a single sentence in the September 2007 Joint Declaration of its component members¹, who aver (at p. 4, ¶ 16) "The members of the Institutional Investor Group understand that, as the Lead Plaintiff in this Action, each of us is subject to the jurisdiction and bound by all rulings of the Court, including rulings regarding any judgments." That does not (nor could it) even purport to bind unrelated German or other investors "in Europe where most of the securities were traded" (id. at p. 3, ¶ 12), where actual notice-giving to absent class members may be required before they are bound, and where their court may not enforce a United States class action judgment.

¹ The Joint Declaration is attached as Exhibit A to the September 7, 2007 Declaration of Geoffrey Jarvis.

Therefore, the Court adheres to the Opinion and its determination is unchanged for the reasons set forth therein.

So ordered.

Dated: November 27, 2007
New York, New York

Louis L. Stanton
Louis L. Stanton
U.S.D.J.